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IN THE
COURT OF APPEALS OF INDIANA

CHRISTIAN LAMAR RILEY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A05-0410-CR-557
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas W. Webber, Sr., Judge
Cause No. 45G03-9908-CF-134

April 7, 2005

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Christian Riley was convicted of escape, a Class C felony, and sentenced to four years

imprisonment. Two years of his sentence was suspended, and he was ordered to serve two years probation. His probation was subsequently revoked. Riley now appeals. We affirm.

Issues

Riley raises two issues for our review, which we restate as follows:

1. Whether he knowingly, intelligently, and voluntarily waived his right to be represented by counsel at the probation revocation hearing; and

2. Whether the State presented sufficient evidence to support the revocation of his probation.

Facts and Procedural History[1]

Riley entered a plea of guilty to escape, a Class C felony, in Lake County. He was sentenced on January 25, 2000, to four years imprisonment, with two years of the sentence suspended, and two years ordered to be served on probation. Riley was advised of the conditions of probation and acknowledged the advisement in open court. As a special condition of probation, Riley was ordered to pay court costs.

On November 2, 2001, the Lake County Probation Department filed a petition to revoke Riley's probation, alleging that Riley had violated the following terms of his probation:

> RULE #4. LAWS AND CONDUCT: [Riley] is under investigation by the Federal Bureau of Investigation, charges are pending.
> RULE #8: SUPERVISION AND COOPERATION: [Riley] has failed to report as ordered to probation. [Riley] failed to report for the month of October 2001.
> RULE #9: FINANCIAL OBLIGATIONS: [Riley] has failed to pay Court

[1] We held oral argument in this case on March 9, 2005, at Ivy Tech State College in Lafayette, Indiana. We thank the administration, faculty, and students of Ivy Tech for their hospitality, and we also thank counsel for their capable presentations.

> Costs in the amount of $125.00 and Probation User Fees in the amount of $245.00.

Appendix to Brief of Appellant at 37. A warrant was issued for Riley's arrest. The court was subsequently advised that Riley was in the custody of the United States Penitentiary in Jonesville, Virginia, but extradition proceedings were declined by the court at that time due to distance. On July 30, 2004, the Lake County Probation Department filed an amended petition to revoke probation which alleged that Riley had violated the following terms of his probation:

> RULE #4. LAWS AND CONDUCT: On October 23, 2003, [Riley] was convicted of Distribution of Crack Cocaine Base, United States District Court, Northern District of Indiana, Hammond Division, Case No. 2: 01M2141 and sentenced to 60 months with 3 years Supervised Release. Tentative Release Date from the Federal Bureau of Prisons: April 26, 2006.
> RULE #8: SUPERVISION AND COOPERATION: [Riley] has failed to report as ordered to probation. [Riley] failed to report to Probation since October 2001.
> RULE #9: FINANCIAL OBLIGATIONS: [Riley] has failed to pay Court costs in the amount of $125.00 and Probation User Fees in the amount of $245.00.

App. to Brief of Appellant at 42. On September 9, 2004, the court received a letter from Riley in which he acknowledged receiving a copy of the amended petition and stated that he had been held in the Lake County Jail since April 5, 2004. On September 14, 2004, Riley appeared in court and the trial court engaged him in the following colloquy:

> Q. [by Court:] Have you received a copy of the amended petition to revoke your probation, sir?
> A. [by Riley:] Yes.
>
> Q. The petition, as I allege it – as I understand it, alleges, Mr. Riley, that you violated rule four, rule eight and rule nine. Is that what you understand the allegations to be?

A. I only have an order from [Judge Pro Tempore] Kathleen Sullivan stating that my probation's been revoked. . . .
* * *
Q. How old are you, sir?
A. 29.
Q. Can you read, write, and understand the English language, sir?
A. Yes.
Q. What was the highest grade in school you completed?
A. Eleventh grade.
Q. Are you under the influence of any drugs or alcohol that would impair or affect your understanding of these proceedings?
A. No, sir.
Q. Do you suffer from mental or emotional disabilities that would impair or affect your understanding of these proceedings?
A. No, sir.
Q. The petition alleges rule four, that on October 30th, you were convicted of distribution of crack cocaine in the United States District Court, and that's a violation of rule four, laws and conduct.

It's also alleged in the petition that you failed to report to your probation officer since October, 2001; that's a violation of rule eight.

It's also alleged you violated rule nine, that you failed to pay the court costs of $125 or any users fees in the amount of $245; that's a violation of rule nine, meeting your financial obligations.

That's the allegations that are set forth with the amended petition to revoke your probations. Do you understand that, Mr. Riley?
A. Yes.
Q. Now, you should understand, sir, that you have the right to have a hearing in these allegations, and the State has the burden of establishing those allegations by what is called a preponderance of the evidence. They don't have to prove it beyond a reasonable doubt, but just show it's more probable than not probable you did what's been alleged.

Of course, if the hearing is held, you have the right to face witnesses who will testify against you and to see, hear, question and cross examine those witnesses. You also have the right to have witnesses come into the courtroom, have them testify on your behalf, understanding that the Court would issue subpoenas, and compel those persons to come and testify.

You should also understand, sir, that you have the right to remain silent. You can't be required to give any statements or testify against yourself. On the other hand, you have the right, if you choose, to be heard by yourself or by a lawyer, if one is appointed. You should also understand that you have the right to be represented by counsel, and if you can't afford an attorney, the Court will appoint a lawyer for you at no cost to you.

You should also understand, sir, that if you admit these allegations, the case will be disposed of today, and we'll be done with this petition to revoke your probation. You should also understand that if you deny the allegation, the Court will set a bond, set the matter for hearing at a later date, and we'll proceed on the fact finding hearing to determine whether or not in fact you violated the rules at a hearing. Do you understand those rights as I've outlined them, sir?
A. Yes.
Q. Is it your intention to admit or deny these allegations?
A. I want to admit.
Q. Do you admit the fact that you were – violated rule four by being convicted in the United States District Court under cause 2-01M2141; is that correct?
A. Yes, sir.
Q. And you in fact were sentenced to 60 months, three years supervised release; is that correct, sir?
A. Yes.
Q. Do you also admit, sir, that you violated rule eight, failed to report to your probation officer since October, 2001?
A. Yes.
Q. Do you admit that you failed to make your financial obligations by paying court costs of $125 or any users fees in the amount of $245?
A. Yes.
Q. The Court will make the finding then that . . . Mr. Riley is 29 years of age, understands the nature of the petition to revoke his probation, that he understands his rights in this matter and has waived those rights, and the Court now finds that Mr. Riley has violated rule four, failure to meet with the requirements – comply with the laws of the State of Indiana, County, or the United States. Further, he violated rule eight in that he failed to meet with his probation officer, and further, he violated rule nine, failure to meet his financial obligations and has a current arrearage of $370. As a consequence, Mr. Riley, probation is now revoked.

State, any recommendations?
[THE STATE]: Your Honor, the State would ask for the suspended time.
THE COURT: Anything you want to say, Mr. Riley?
[RILEY]: Yes, I don't agree – I mean, I don't disagree about me getting the suspended time, but I was wondering if it could be ran [sic] concurrently with my federal sentence.

Transcript of the Amended Petition to Revoke Probation at 3-8. The court ordered Riley to serve the two-year suspended portion of his original sentence in the Indiana Department of

Correction consecutive to the sentence he was then serving for the federal conviction.

Riley subsequently wrote several letters to the court regarding alleged errors in the revocation proceeding, and the court appointed an attorney to prosecute this appeal.

Discussion and Decision

I. Waiver of Right to Counsel

Riley first contends that the trial court erred in finding that he knowingly, intelligently, and voluntarily waived his right to be represented by counsel at his probation revocation hearing.

The right to counsel at a probation revocation hearing is provided by statute. Ind. Code § 35-38-2-3(e). The right to counsel can only be relinquished by a knowing, voluntary and intelligent waiver of the right. Atkinson v. State, 810 N.E.2d 1190, 1192 (Ind. Ct. App. 2004). The law "indulges every reasonable presumption against a waiver of this fundamental right." Poynter v. State, 749 N.E.2d 1122, 1126 (Ind. 2001). Waiver of assistance of counsel may be established based upon the particular facts and circumstances surrounding the case, including the background, experience, and conduct of the accused. Jones v. State, 783 N.E.2d 1132, 1138 (Ind. 2003). In addition, a defendant who asserts his right to self-representation should be warned of the dangers and pitfalls of self-representation. Poynter, 749 N.E.2d at 1127.

Riley contends that Hagy v. State, 639 N.E.2d 693 (Ind. Ct. App. 1994) is dispositive. In Hagy, the trial judge asked the defendant, a nineteen-year-old high school dropout who appeared in court without counsel, "Are you just going to represent yourself today?" 639

N.E.2d at 694. The defendant replied in the affirmative. The trial judge then asked the State to present its case, and at the close of the hearing the defendant was ordered to serve her eighteen-month sentence. Because the defendant was never advised of the dangers and disadvantages of proceeding pro se, we held that the record did not support a knowing, voluntary, and intelligent waiver of the right to counsel and reversed the trial court's revocation of the defendant's probation. Id. at 695.

Hagy was discussed in Greer v. State, 690 N.E.2d 1214 (Ind. Ct. App. 1998), trans. denied. In Greer, the trial court advised the defendant at his initial hearing on a petition to revoke probation that he had the right to be represented by an attorney or to have one appointed for him and asked if he was making arrangements to get an attorney. The defendant stated that he was planning to just admit the allegation. The trial court then iterated that he had the right to have an attorney at his own or public expense and the defendant indicated that he understood. The trial court then advised the defendant of the remainder of his rights, including the possible consequences of a finding that he had violated his probation. The defendant acknowledged that he understood his rights and still wished to admit that he had violated the terms of his probation. The court accepted his admission and found that he had violated his probation. On appeal, the defendant claimed that the trial court did not properly determine that he knowingly, intelligently, and voluntarily waived his right to counsel because the court did not inquire into his educational background and familiarity with legal procedures or advise him of the pitfalls of self-representation. We held otherwise. We first noted the conclusion in Redington v. State, 678 N.E.2d 114 (Ind. Ct. App. 1997),

trans. denied. In Redington, we held that even though a defendant was not warned of the pitfalls of self-representation before pleading guilty, admonishments regarding the dangers of self-representation at trial are inapplicable in a guilty plea setting because "'none of the typical consequences of waiving counsel and proceeding to trial'" are present. 678 N.E.2d at 118 (quoting Sedberry v. State, 610 N.E.2d 284, 287 (Ind. Ct. App. 1993), trans. denied). Relying on the holding in Redington, we stated in Greer:

> [A] probationer who chooses to admit his probation violation places himself in a situation similar to that of a defendant who chooses to plead guilty to criminal charges. Neither person is in danger of "conviction" at the hands of the State. It is unnecessary to warn such a person of the pitfalls of self-representation, for those pitfalls only exist when he is confronted with prosecutorial activity which is designed to establish his culpability. It is therefore clear that, when a probationer who proceeds *pro se* chooses to admit rather than to challenge his alleged probation violation, his knowing, intelligent, and voluntary waiver of counsel may be established even if the record does not show that he was warned of the pitfalls of self-representation.

690 N.E.2d at 1217. We then distinguished Hagy, upon which the defendant had relied: "[i]n Hagy, there is no indication that the defendant intended to admit the State's allegations." Id. at 1219. Unlike the defendant in Hagy, who might have been faced with the State's attempt to establish her culpability and was thus entitled to be advised of the pitfalls of self-representation, the defendant's decision in Greer to admit the State's allegations meant the State would not be attempting to establish his culpability and it was therefore unnecessary for the trial court to advise him of the pitfalls of self-representation. Id.

Riley contends that his case is akin to Hagy in that he was not advised of the pitfalls of self-representation, nor was he advised of the possible consequences of a finding that he violated his probation. Riley's reliance on Hagy is misplaced. As noted in Greer, the

defendant in Hagy never indicated an intention to admit the allegations against her. Riley, like the defendant in Greer, affirmatively indicated that he wished to admit the allegations of the revocation petition after being advised of his right to counsel. We held in Greer that "[i]t is unnecessary to warn such a person of the pitfalls of self-representation." 690 N.E.2d at 1217. We now hold that, although the record does not show that Riley was specifically advised of the pitfalls of proceeding without counsel, the record nonetheless demonstrates his knowing, intelligent, and voluntary waiver of counsel.

II. Sufficiency of Evidence

Riley next contends that there was insufficient evidence to support the revocation of his probation.

In reviewing a claim of insufficient evidence, we will affirm when there is substantial evidence of probative value to support the court's conclusion that a probationer has violated any condition of probation. Johnson v. State, 692 N.E.2d 485, 486 (Ind. Ct. App. 1998). We consider only the evidence most favorable to the trial court's decision. Id. We will not reweigh the evidence or judge the credibility of the witnesses. Garrett v. State, 680 N.E.2d 1, 2 (Ind. Ct. App. 1997). A probation revocation hearing is in the nature of a civil proceeding and the alleged violation need only be proven by a preponderance of the evidence. Brooks v. State, 692 N.E.2d 951, 953 (Ind. Ct. App. 1998), trans. denied. Proof of any one violation is sufficient to revoke a defendant's probation. Id.

Riley contends that because his probation was revoked based solely on his admission to the violations, the State did not present sufficient evidence to support the revocation.

Probation consists of two steps: "[f]irst, the court must make a factual determination that a violation of a condition of probation actually occurred. If a violation is proven, then the trial court must determine if the violation warrants revocation of the probation." Parker v. State, 676 N.E.2d 1083, 1085 (Ind. Ct. App. 1997).[2]

Riley cites Johnson v. State, 692 N.E.2d 485 (Ind. Ct. App. 1998), and Martin v. State, 813 N.E.2d 388 (Ind. Ct. App. 2004), to support his argument that his admissions alone were insufficient to prove a violation of the conditions of his probation. In Johnson, we held that the limited testimony of the defendant's probation officer that he had a new arrest was insufficient by itself to support the trial court's finding that he had violated the condition of his probation that he not commit a criminal offense. 692 N.E.2d at 487. However, the defendant in Johnson had not admitted the allegations as Riley did. And in Martin, we held that the defendant's admission that he had been arrested and charges had been filed against him was alone insufficient to support the revocation of his probation for committing a criminal offense. 813 N.E.2d at 391. We did note that the filing of charges might have been sufficient if the trial court had found by a preponderance of the evidence that there was probable cause to support them, but the trial court did not do so in that case. Id. at 391 n.3.

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[2] In Parker, the court noted:

> The simple finding that a probation violation occurred is not sufficient to revoke a defendant's probation. It is equally necessary for the court to determine whether the violation warrants revocation. In making that determination, the probationer must be given an opportunity to present evidence which explains and mitigates his violation.

676 N.E.2d at 1086 n.4. Because the defendant therein entered into an agreement with the State to admit to the violations and have his probation revoked in exchange for less than the entire suspended sentence being imposed, the court did not need to determine whether the violation warranted revocation. Id. Riley seems to challenge only the first step of the probation revocation process: the factual determination that a violation occurred.

However, the defendant in Martin had apparently not been convicted, beyond a reasonable doubt, of a criminal offense as Riley was. Notwithstanding his admission to the alleged violations of conditions of probation, Riley contends that the State was obligated to introduce some evidence supporting each violation.

The State counters that Riley's admission that he had been convicted of a crime while on probation alone supports the revocation of his probation.[3] In Morrissey v. Brewer, 408 U.S. 471 (1972), the United States Supreme Court announced the following minimum requirements for due process in probation revocation proceedings:

> (a) written notice of the claimed violations of [probation]; (b) disclosure to the [probationer] of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a "neutral and detached" hearing body . . .; and (f) a written statement by the factfinders as to the evidence relied on and reasons for revoking [probation].

Id. at 489. See also Ind. Code § 35-38-2-3. "When a probationer admits to the violations, the procedural safeguards of Morrissey and the evidentiary hearing are not necessary." Parker, 676 N.E.2d at 1085. In Parker, upon finding that the defendant, through his attorney, had admitted a violation of his probation, we held that the admission supported the trial court's revocation of his probation even absent the presentation of evidence supporting his admission. Id. at 1086. The defect in Johnson and Martin was that the evidence in each case proved only that the probationer had been arrested, which is not alone sufficient to support

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[3] At oral argument, the State conceded that the evidence was insufficient as to the two non-criminal violations. However, as we have already noted, violation of a single condition of probation is sufficient to

revocation. See Gleason v. State, 634 N.E.2d 67, 68 (Ind. Ct. App. 1994) ("The law is clear that being arrested for a crime is insufficient to revoke a defendant's probation. There must either be proof at the revocation hearing that the defendant engaged in the alleged criminal conduct or proof of the conviction thereof." (citation omitted)). However, "[a] criminal conviction is prima facie evidence of a violation and will alone support a revocation of probation." Williams v. State, 695 N.E.2d 1017, 1019 (Ind. Ct. App. 1998). Because Riley admitted to a criminal conviction, his admission alone is sufficient to support revocation.

Conclusion

The record shows that Riley knowingly, intelligently, and voluntarily waived his right to representation by counsel at his probation revocation hearing. In addition, his admission to the allegation that he had violated his probation by being convicted of a crime while on probation is sufficient to support revocation. The judgment of the trial court is, therefore, affirmed.

Affirmed.

RILEY, J., and CRONE, J., concur.

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support revocation. Brooks, 692 N.E.2d at 953. We will therefore confine our discussion to the allegation that Riley violated his probation by committing another criminal offense.